

¹Dr. Stanish is not named as a defendant in the complaint.

The parties named in the complaint are Michael Klopotoski, Superintendent at SCI Dallas; Patricia Ginocchetti, former Corrections Health Care Administrator at SCI Dallas; Pennsylvania Department of Corrections; and Stanley Bohinski, D.O. All defendants filed motions to dismiss. The magistrate judge has recommended the motions be granted.

II. Discussion

In examining the complaint, the magistrate judge found that the complaint failed to comply with the legal standard applicable in deciding a motion filed pursuant to Federal Rule of Civil Procedure 12(b)(6). The magistrate judge applied the rulings set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937 (2009) in arriving at his recommendation. Rather than recommending dismissal on the inadequate complaint, however, the magistrate judge addressed the complaint as if it meant to plead an Eighth Amendment violation.

As to the inadequate medical care claim, the magistrate judge found that the claim amounted to a dispute concerning the course of treatment and, at most, would amount to a negligence claim. The magistrate judge recommended the dismissal of Defendants Superintendent Michael Klopotoski and Patricia Ginocchetti on the basis that they were sued in their capacity as *respondeat superiors*. The magistrate judge further recommended that Plaintiff not be granted leave to file an amended complaint as it would be futile.

III. Conclusion

The findings and recommendations of the magistrate judge are adequately supported by the case law set forth in the report and recommendation as applied to the facts of this case. Accordingly, the court will adopt the report and recommendation. An appropriate order will be issued.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: December 28, 2010.

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